

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2705 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARESHBHAI KARSANBHAI GOSWAMI

Versus

COMMISSIONER

Appearance:

MR AP RAVAL for Petitioner

MR DA BAMBHANIA for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/07/98

ORAL JUDGEMENT

RULE.

By way of this Special Civil Application, the petitioner seeks direction to quash the order dated 26.4.1997 whereby Special increment granted to the petitioner has been stopped and recovery has been

ordered.

2. The petitioner was appointed on the post of Block Extension Executive on 18.9.1990. On 5.6.1991, he applied for family planning allowance i.e. special increment, in view of the Government Resolution dated 4.9.1979. It may be stated that by the said Resolution in order to give incentive to the family planning programme, it was resolved that if an employee having one or more child/children undergoes family planning operation, he will be given special increment. In view of the said Resolution, the petitioner was granted special increment of Rs.60/- per month. The petitioner, in his application had stated that his wife had undergone surgery of family planning on 20.2.1990.

3. By the impugned order, the said allowance has been stopped for the reason that the said Resolution is applicable only to those employees who have undergone family planning operation while in service. The petitioner entered into service on 18.9.1990 whereas the family planning operation was performed in February 1990 i.e. prior to his entering into the service. It is contended by the learned Advocate that the said Resolution does not show any difference whether the operation has been performed prior to joining of the service or thereafter. As per the Resolution, an ideal family is of two or three children. I have read the relevant Resolution. A reading of the Resolution shows that it applies to the employees who have undergone family planning operation while in service. In view of this, I do not find any infirmity in the impugned order stopping the special increment. So far as the question of recovery is concerned, it must be noticed that in the application itself, the petitioner has clearly stated that the operation was performed on 18.9.90. In view of this, it cannot be said that the petitioner has taken any benefit by fraud or concealment of material fact. As per the interpretation given at the relevant time special increment was given to the petitioner. He has received the same. In view of this, no recovery can be made from the petitioner on that ground.

4. In view of the aforesaid, this Special Civil Application is partly allowed. Part of the impugned order so far as it relates to the recovery of the amount paid as special increment is quashed and set aside.

Rule made absolute to the aforesaid extent.

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msp.